IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3187 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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B.M. PATEL,PRINCIPAL

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 3187 of 1992

MR DP VORA for Petitioner No. 1

MR PR ABICHANDANI, AGP, for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/07/2001

ORAL JUDGEMENT

The secondary schools receiving grant-in-aid from the State Government were at the relevant time being given grant for meeting with the expenses of the building also. The amount of building rent eligible for the

purpose of grant at the relevant time was being calculated on the basis of salary bill for the employees of the school. The controversy raised in the petition is about the items to be included in or excluded from the salary bill for the purpose of giving the grants for building rent to the secondary schools. The controversy is for three years i.e. 1981-82 to 1983-84.

2. At the hearing of this petition, the following G.Rs. are brought to the notice of the Court regarding the aforesaid controversy:

(i) Government Resolution No.GAC-1077-39197-G dated 10-11-1978;

(ii) Government Resolution No.GAC-1071-93778-53467 (78)-G dated 30-11-1978, and

(iii) Government Resolution No.B M SH-1187/2174-G dated 17-7-1992.

The last Government Resolution dated 17-7-1992 cannot be applied to the controversy in relation to the prior period i.e. 1981-82 to 1983-84. As far as the Government Resolution dated 30-11-1978 is concerned, it does contain certain clarifications on the issues covered by the G.R. dated 10-11-1978 but none of those issues pertain to grant for building rent. Therefore, the same is also not required to be referred to.

The only Government Resolution which is, therefore, required to be considered for deciding the controversy herein is the Government Resolution dated 10-11-1978, a copy of the same is produced at Annexure `B' to the petition but on account of certain typing mistakes, the Court called upon the learned AGP to produce a true copy of the said resolution dated 10-11-1978. The learned AGP has produced the said G.R. dated 10-11-1978.

3. The petitioner-institution was paid the grant for building rent on the basis of the salary bill. Clause (g) of the Government Resolution dated 10-11-1978, when translated, reads as under:

(g) Building Rent:-

(1) In respect of schools occupying the rented premises:

Within the limits of reasonable rent as

mentioned in the certificate issued by the Executive Engineer, the amount of rent with tax actually paid by the institution or 12-1/2% of the pay bill, whichever is less, shall be eligible for grant;

(2) In respect of schools having self-owned premises: .....

We are not concerned with the second category of schools since in the instant case, the school run by the petitioner-institution was accommodated in the rented premises.

4. The controversy is whether the salary bill would include only basic pay and D.A. or whether it would also include H.R.A and C.L.A paid to the employees of the school. The petitioner was already paid grant for the building rent for the aforesaid three years on the basis that the salary bill would include H.R.A. and C.L.A. also. Subsequently the authorities recovered the differential amount after raising an objection that for the purpose of grant for the building rent, salary bill would not include H.R.A. and C.L.A.. It is that decision which is under challenge.

5. While issuing Rule, this Court had granted ad-interim stay against the implementation and operation of the impugned order but before the ad-interim relief could be served upon the respondents, the respondents had already made the recovery.

6. Mr. D.P. Vora, learned counsel for the petitioner has submitted that there is no reason or justification for restricting the scope of salary bill for the purpose of calculating the grant for building rent. Mr. Vora also states that except for the above three years, in subsequent years the authorities did release grant for building rent on the basis that salary bill included H.R.A. and C.L.A also.

7. On the other hand, Mr. P.R. Abichandani, learned AGP has relied on the note just above clause (g) which states that while calculating the grant for other educational expenses, the amounts of H.R.A and C.L.A. shall be deducted from the salary bill.

8. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the grievance being made on behalf of the

petitioner. The payment of grant for building rent is governed by clause (g) of the Resolution dated 10-11-1978 which only makes a reference to salary bill. The note above clause (g) specifically states that exclusion of the H.R.A. and C.L.A. from salary bill is to be made while computing grant for other educational expenses. Admittedly, building rent is not subject matter of clauses (kha) and (kha 1) for which only the note is incorporated in the Resolution. Moreover, in view of the fact that in respect of this very school, the authorities calculated grant for building rent on the basis of salary bill which included H.R.A and C.L.A also, there is no reason why the same interpretation should not be applied to the years 1981-82, 1982-83 and 1983-84.

9. It is clarified that by Government Resolution dated 17-7-1992, the State Government laid down that for the purpose of calculating the grant for building rent, salary bill will include only the pay and D.A., meaning thereby the salary bill would not include H.R.A or C.L.A.. However, since that resolution is not applicable for the period which is the subject matter of this petition, nothing further need be said regarding the said resolution.

10. For the reasons aforesaid, this petition is allowed. The respondents are directed to refund to the petitioner-institution the amount recovered pursuant to the impugned order dated 4-4-1992 at Annexure `A' to the petition. This direction shall be complied with within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute accordingly with no order as to costs.

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